

Patrick Ellis. Appellant.

JOHN FOWLE, Executor of ROBERT FOWLE, who was surviving Assignee of a Statute of Bankrupt against RICHARD FIFEILD, Respondent.

The Respondents CASE, on behalf of the Bankrupt's Creditors.

RICHARD FIFEILD the Bankrupt, a Tanner by Trade, having Dealings with the Appellant a Merchant in London, intrusted him to keep the Accounts, (Fifeild being ignorant therein) and in 1701 the Appellant contrived an Account with a pretended Ballance of 678 l. 15 s. 6 d. due to him, and endeavoured to have imposed it upon Fifeild, and Sued out a Writ for 1000 l. and terrified him with an Arrest, which obliged him to Abscond, and then to submit to an Arbitration, and Bonds were accordingly Sealed, and Three Arbitrators named, Two whereof unduely Awarded to the Appellant 374 l. 3 s. 4 d. (the Third protesting against their Proceedings and refusing to joyn in the Award) and Fifeild not having a fair opportunity to be Heard by reason of the 1000 l. Writ, and a Warrant taken out thereupon, and then out against him, the Two Arbitrators were so partial as to Allow in one Article 196 l. 9 s. 9 d. on account of Guineas when only 100 l. 18 s. 1 d. was demanded, and even that referred to Fifeild's Oath, who acquitted himself thereof upon his Oath accordingly. And on this Award Fifeild was immediately Arrested, thrown into Prison, Judgment against him, and he confined close Prisoner 7 Years to his Ruin.

After this the Appellant Sued out a Statute of Bankrupt got himself and his Arbitrator Newell (who was no Creditor) to be nominated for Assignees, but was disappointed in that Design by an Order in Chancery, and Fowle and Wotten (appointed the Assignees) the Creditors looking into this Award, and finding it made after Fifeild became a Bankrupt, and therefore that it bound not them, to prevent the tedious Expence of a Chancery Suit, applied by Petition to the late Lord Keeper, praying an Examination of the Matter in a Summary Way before the Commissioners, and to lay open the Accounts which was directed, and the Appellant comply'd therewith, and from time to time attended the Commissioners, and after the Commissioners had spent several Months in examining the Accounts and were ready to Report the Appellant in Fifeild's Debt, the Creditors petitioned for the Report which was vigorously opp'd by the Appellant, who insisted that all that had been done was extrajudicial, and he prevail'd, and all that Labour and Expence was lost. But the Court of Chancery on Hearing the Petition so far took Notice of it, as to Order the Commissioners to make an Assignment of a Debt as due from the Appellant to enable the Creditors to bring their Bill to set aside the Award, and according to the direction of the Court of Chancery the Respondent's Bill was brought occasion'd by the Appellant's fault, that he would not abide the Summary Way the Court had put it into, and himself had once comply'd with.

The said Bill was brought to set aside the Award, which was pleaded in Bar to the Bill, and Ordered to stand for an Answer, afterwards an Issue was directed and Fifeild upon full Evidence at the Tryal found a Bankrupt at the time of the Award, which was Decreed to be set aside (as to the Creditors) and an Account was directed and the Appellant was to be paid so far as the Bankrupt's Estate had or shou'd come to the Assignees hands, so his whole Debt was provided for by the Decree, tho' the other Creditors proportions were not 10 s. in the Pound.

That pending the Reference before the Master, the Appellant took out Execution on his 1000 l. Bond for performing the Award, levied near 300 l. of the Bankrupt's Goods, put the Money in his Pocket, stood out a Tryal, and a Verdict for the value thereof, brought his Bill in Chancery, obtained an Injunction for delay, kept it up near Nine Months by insufficient Answers, and when dissolved upon the Merits, brought a First Writ of Error, and after about 12 Months spent discontinued it, and brought a Second Writ of Error which is still pending, and all this time has 300 l. in his Hands belonging to the Creditors. (This the Court of Chancery as it is conceived wou'd have committed him for, if the Creditors had complained)

The Master made his Report, whereto Exceptions were taken by both Sides, and all the Appellant's Exceptions over-ruil'd, the Respondent's Third Exception was for that the Master had allowed the Appellant 67 l. 13 s. 6 d. which he ought not to have done, for that it had been charged on Fifeild in a former Account, whereon was a Ballance of 30 l. 16 s. 6 d. due to Fifeild. And the 6th Exception was for that the Appellant had an Allowance of 56 l. 17 s. 0 d. without Proof; both these Exceptions were allowed on arguing and re-arguing before the Lord Chancellor, and the Appellant's Demands reduced to 179 l. or thereabouts, so the Creditors having prevailed as well against the pretended Ballance of 678 l. 15 s. 6 d. as against the Award unfairly obtained for 374 l. 3 s. 4 d. and the Appellant having near 300 l. in his Hands, which he came at by such an extraordinary Method and undue Means.

The Creditors moved the Lord Chancellor on the Circumstances of this Case, and on Hearing Council on both Sides, obtained an Order for their Costs to be deducted out of the Money due to the Appellant. And on the 20 of the same July, the Bankrupt (who had lain 7 Years in Prison) was Ordered to be Discharged, and the Costs were taxed at 180 l. 6 s. 8 d.

The Creditors obtained another Order on Hearing Council on both Sides before the Lord Chancellor, for the Master to ascertain what remained due to the Appellant after a deduction of what was taxed for Costs, and what was allowed on arguing the Exceptions, and on payment of the Remainder the Appellant was to deliver up the Award Bond and vacate his Judgment.

The Master pursuant to the last Order, deducted the Costs and what was allowed on the Exceptions, and Reported the Remainder due to the Appellant to be only 02 l. 13 s. 9 d. which Report is since confirmed, so the Appellant who in the first instance pretended 678 l. 15 s. 6 d. and by his Award 374 l. 3 s. 4 d. is at last upon Examination of the Accounts Reported to be a Creditor for no more than 02 l. 13 s. 9 d.

And yet after all these Hearings, Rehearings and Proceedings at Law and in Equity, the Appellant hath thought fit to Appeal.

The First Objection is made against the Orders of the 16th April, and 27th October, whereby the Creditors Third Exception for disallowing the Appellant 67 l. 13 s. 6 d. and allowing to the Creditors 30 l. 16 s. 6 d. was on Arguing and Re-arguing before the Lord Chancellor allowed.

The Master having allowed the Appellant 67 l. 13 s. 6 d. an Account (with this extraordinary Title *The separate Account betwixt Fifeild and Ellis, whereof no particulars are entred in the Books of the said Ellis, but only the Ballance of 30 l. 16 s. 6 d. industriously concealed by the Appellant, till just closing the Report*) was then produced by him for another purpose and by that Account it appeared that Fifeild had been before Charged with the particulars of the 67 l. 13 s. 6 d. in that separate Account, and a Ballance of 30 l. 16 s. 6 d. was due to Fifeild thereon, and that Ballance having been entred in the Appellants own Books, and acquiesced under 18 Years; the Creditors very justly insisted they ought to be Discharged of the 67 l. 13 s. 6 d. and be allowed the said Ballance of 30 l. 16 s. 6 d. And the Court were clear of Opinion with 'em in that Matter, and allowed the 3d Exception accordingly, on Arguing and Re-arguing thereof.

The Second Objection is made against the same Orders of April and October, for disallowing to the Appellant 56 l. 17 s. 0 d. on Arguing and Re-arguing of the Respondents 6th Exception.

The Appellant had no Proof of his payment of the 56 l. 17 s. 0 d. he only produced an Entry in his Books where such Sum is enter'd to be paid by Fifeild the Bankrupt, that it was for Money lent before, but the Entry appeared irregular and to have been tampered with and altered in a material Point and these Words, [*Being for the same Sum lent as per C. B.*] Since added in one of his Books in a different Hand with fresh Ink and no Entry in his Cash-Book of the lending of any such particular Sum, nor any Entry at all of any such Sum in any Book till after that Sum received by the Appellant from Fifeild, and therefore if it was paid to the Appellant for Money lent before, it is probable it was paid in Part of the several Sums entred fairly and then due, and not as payment of such a particular Sum of 56 l. 17 s. 0 d. lent by it self distinct from the several Sums entred, for which reason the Entry had no Credit, and the Court presumed the 56 l. 17 s. 0 d. to be contained in the other Articles of Money lent, wherewith the Creditors were charged precedent to that time.

The Third Objection is made against the Order of the 13th of July, whereby the Creditors have their Costs. The Defence made by the Appellant and his endeavours to set up the Award and Seizing the Bankrupt's Goods, Tho' at last found a Creditor for only 02 l. 13 s. 9 d. were against Conscience, and his Proceedings appeared to be of such a Nature as the Court justly condemned him to pay Costs.

The Fourth Objection is made against the Order of the 20th July, for Discharging the poor Bankrupt out of Prison. Surely nothing was more Just than this Order, the poor Man had been a Prisoner for 7 Years, and the Appellant had received one Satisfaction of his pretended Demands in the Creditors Cause, so he can have no other End for keeping the poor Man in Prison, but to force a double Satisfaction, which is disagreeable to Equity and good Conscience, And the poor Man has paid dear enough to lye 7 Years in Prison for 02 l. 13 s. 9 d.

The Fifth Objection is against the Order of the 18th of Dec. for deliveing up the Award Bond, and vacating the Judgment on payment of what was due, and the Report grounded thereon, and the Order for Confirmation thereof.

The Appellant in Justice can have but one Satisfaction which he has already had, and the keeping up the Bond and Judgment can be for no other End than to compel the poor Bankrupt to make double Satisfaction: And in this Case it cannot be doubted but the Bankrupt might in a Court of Equity grounded on the Creditors proceedings, and Satisfaction made in that Cause be relieved against the Bond and Judgment, and the Order of Chancery has done no more. Nay it is of Advantage to all Parties to have one End, and not to be exposed to other Suits, and the very Foundation of the Order is no more than to put the Matter at Peace, and prevent multiplicity of Suits.

T. Parker.
Spencer Comper.

Hillary, 1702.

26 Nov. 1707.

13 July, 1708.

18 Dec. 1708.

14 Jan. 1708.

Objection, 1st.

Answer.

Objection, 2d.

Answer.

Objection, 3d.

Answer.

Objection, 4th.

Answer.

Objection, 5th.

Answer.